



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making**Agency:** Office of the Secretary of State, Elections Division

- ☒ **Preproposal Statement of Inquiry was filed as WSR 07-22-030** ; or
☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____ ; or
☐ **Proposal is exempt under RCW 34.05.310(4).**

- ☒ **Original Notice**
☐ **Supplemental Notice to WSR** _____
☐ **Continuance of WSR** _____

Title of rule and other identifying information: (Describe Subject): The Cycle 5 Rules of 2007 address issues such as forwarding ballots, redistricting, the voters' pamphlet, the HAVA complaint process, and logic and accuracy tests.**Hearing location(s):**

Conference Room
520 Union Ave. S.E.
Olympia, WA 98501

Date: 2/5/2008 Time: 1:30 p.m.

Submit written comments to:

Name: Dave Motz
Address: P.O. Box 40220
Olympia, WA 98504-0220
e-mail dmotz@secstate.wa.gov
fax (360) 586-5629 by (date) 2/5/2008

Assistance for persons with disabilities: Contact

_____ by _____

TTY (800) 422-8683 or () _____**Date of intended adoption:** 2/6/2008(Note: This is **NOT** the **effective** date)**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The rules will implement standard procedures statewide and clarify procedures. They address issues such as forwarding ballots, redistricting, the voters' pamphlet, the HAVA complaint process, and logic and accuracy tests.**Reasons supporting proposal:** Rules must reflect current law and are necessary for uniformity.**Statutory authority for adoption:** RCW 29A.04.611**Statute being implemented:****Is rule necessary because of a:**

Federal Law? ☐ Yes ☒ No
Federal Court Decision? ☐ Yes ☒ No
State Court Decision? ☐ Yes ☒ No
If yes, CITATION:

DATE
12/28/07

NAME (type or print)
Steve Excell

SIGNATURE

TITLE
Assistant Secretary of State

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 28, 2007
TIME: 3:59 PM

WSR 08-02-072

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization)

- ☐ Private
☐ Public
☐ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... David Motz / Katie Blinn	Legislative Building	(360) 725-5786
Implementation.....Katie Blinn	Legislative Building.	(360) 902-4168
Enforcement..... Katie Blinn	Legislative Building	(360) 902-4168

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared. Changes do not appear to have an impact on small business.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain: Not applicable

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-070 Forwarding ballots. (1) If the county auditor chooses ((not)) to forward ballots, ~~((the envelope must clearly indicate the ballot is not to be forwarded.~~

~~((2) If the county auditor chooses to forward absentee ballots, as authorized by RCW 29A.40.091, the county auditor must include with the ballot an explanation of qualifications necessary to vote and)) as authorized by RCW 29A.40.091, the county auditor must utilize postal service endorsements that allow the ballots to be forwarded, allow the county auditor to receive the updated address information, and allow the return of ballots not capable of being forwarded. A voter may only vote a ballot specific to the address where he or she is registered to vote, rather than a ballot specific to a new address. The county auditor must include instructions substantially similar to the following:~~

If you have changed your permanent residence address, please contact your county auditor to ensure the ballot you receive in future elections contains the races and issues for your residential address. If you have any questions about your eligibility to vote in this election, please contact your county auditor.

~~((The above instructions and the explanation required by RCW 29A.40.091 may be provided on the ballot envelope, on an enclosed insert, or on the ballot itself. Auditors must begin to provide the above instruction to voters no later than January 1, 2008. The county auditor must utilize postal service endorsements that allow:~~

~~(a) The ballots to be forwarded;~~

~~(b) The county auditor to receive from the post office the addresses to which ballots were forwarded; and~~

~~(c) The return of ballots that were not capable of being forwarded.))~~ (2) If the county auditor does not forward ballots, the envelope must clearly indicate the ballot is not to be forwarded. If the county auditor receives updated address information from the post office, the county auditor may send the voter a ballot specific to the address where the voter is registered to vote.

(3) If a ballot is returned or forwarded, the county auditor must, following certification of the election, either:

(a) Transfer the voter registration and send the voter an acknowledgment notice, if the updated address is within the county; or

(b) Place the voter on inactive status and send the voter a confirmation notice to all known addresses, if no updated address information was received or the updated address is outside the county.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-100 Ballot deposit sites and voting centers. (1)
If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If ~~((two or more))~~ a deposit site ((staff are)) is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open from 7:00 a.m. until 8:00 p.m. Staffed deposit sites may be open prior to the election according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

- (a) Be posted according to standard public notice procedures;
- (b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;
- (c) Be marked with signage outside the building indicating the location as a place for voting;
- (d) Offer disability access voting;
- (e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;
- (f) Record the name, signature and other relevant information for each voter who votes on a direct recording electronic voting

device in such a manner that the ballot cannot be traced back to the voter;

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened((,)) and by whom((, and the number of ballots removed)). Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or sealed to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-253-025 Polling place--Items to be posted. The following items must be posted or displayed at each polling place while it is open:

- (1) United States flag;
- (2) HAVA voter information poster;
- (3) A sign listing the date of the election and the hours of voting on election day;
- (4) Voting instructions printed in at least 16 point bold type;
- (5) Either sample ballots or voters' pamphlets;
- (6) Voter registration forms;
- (7) Election materials in alternative languages, if so required by the ((~~National Voter Registration Act of 1993~~)) Voting Rights Act (42 U.S.C. 1973((~~gg~~)) aa et seq.); and
- (8) Any other items the county auditor deems necessary.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-015 Canvassing board--Delegation of authority.

The county auditor, prosecuting attorney, and chair of the county legislative authority, or designees as per chapter 29A.60 RCW, shall be responsible for the performance of all duties of the county canvassing board, as set forth in chapters 29A.40 and 29A.60 RCW, and the rules on canvassing adopted by the secretary of state. These duties shall be performed by the members of the board, or they may delegate in writing representatives to perform these duties. This written delegation of authority shall be filed with the county auditor prior to any person undertaking any action on behalf of the board. In no instance may the members of the county canvassing board delegate the responsibility of certifying the returns of any primary or election, of determining the validity of any challenged ballots, or of rejecting ballots. When considering the validity or rejection of ballots, the canvassing board may review the ballots individually, in batches, or as part of a report of ballots presented to the board. In the event the canvassing board (~~((determines that the signature on an absentee or provisional ballot was not made by the voter to whom the ballot was issued or that a voter attempted to vote more than once, the board must direct the county auditor to))~~) concludes that criminal activity may have occurred, the county auditor must refer the ballot and any relevant material to the county sheriff or county prosecuting attorney.

AMENDATORY SECTION (Amending WSR 06-14-046, filed 6/28/06, effective 7/29/06)

WAC 434-262-017 Calculating validation figures and results for bonds and levies. (1) For bonds and levies other than school district levies, before determining a jurisdiction's validation figures, the number of votes cast in the jurisdiction in the last general election must be determined. For levies, the state Constitution states, ". . .the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election. . . ." For example:

10,000 votes cast in the jurisdiction in the last general election
x 40% = 4,000 votes x 3/5 = 2,400 votes

These numbers should be calculated based on the number of voters credited for voting in each jurisdiction, before adding, deleting, or transferring voters following the general election.

(2) When determining the results of a specific bond or levy, county auditors must not include overvotes or undervotes in the calculation. Rounding must not be used to reach (~~sixty percent~~) the percentage of "yes" votes required for a bond or levy to pass. For example:

2,980 "yes" votes ÷ 5,000 total votes cast = 59.6%, so the levy would not pass.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-262-200 Retention of records. All records and materials are to be maintained for a period of sixty days after certification of each election. Where the election involves federal offices the records and material must be kept for ~~((the appropriate time frame as set forth in federal statutes))~~ twenty-two months from the date of the election.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-040 Processing of complaint. (1) The secretary may process the complaint in any of the following ways:

(a) The secretary may dismiss the complaint, and issue a final determination, if it:

(i) Does not comply with WAC 434-263-020 (~~or if it~~);

(ii) Does not, on its face, allege a violation of Title III (~~with regard to an election~~); or

(iii) Alleges a claim for which relief cannot be granted, or for which a remedy is not available;

(b) The secretary may, with the agreement of the parties, resolve the matter informally, and issue a determination without formal proceedings; (~~or~~)

(c) The secretary may resolve the matter informally by agreeing to implement a remedy or corrective action; or

(d) The secretary may schedule the matter for a brief adjudicative proceeding. The secretary shall do so if the complaint is not dismissed pursuant to (a) of this subsection and a party so requests.

(2) The secretary must respond within thirty days of the filing of the complaint to acknowledge receipt and explain how the complaint will be processed consistent with subsection (1) of this section.

(3) The secretary may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-050 Brief adjudicative proceeding. (1) The secretary shall designate (~~one or more people~~) a person to act as a presiding officer(~~(s)~~) of a brief adjudicative hearing. A presiding officer may be:

(a) The assistant or deputy secretary;

(b) The director of elections;

(c) (~~The deputy~~) An assistant director of the elections division;

(d) Any county auditor; or

(e) An administrative law judge.

The (~~designee~~) presiding officer shall not be from an office

named in the complaint.

(2) Before issuing a determination on the complaint, the presiding officer shall give each party an opportunity to explain the party's view of the matter, including an opportunity to be informed of the secretary's view of the matter if applicable. A determination may be based upon written submissions and documents, unless a party or the presiding officer requests a hearing on the record within ten days after the filing of the complaint.

(3) The presiding officer may schedule a hearing on the record:

- (a) In person at a convenient location;
- (b) By conference telephone call; or
- (c) By such other method that permits the parties to hear and participate in the proceeding simultaneously.

Witnesses at a hearing shall be sworn upon oath. A party who requests a hearing but fails to make himself or herself available for hearing within the time available for initial determination shall be deemed to have waived the hearing.

(4) The presiding officer may permit or solicit the submission of written materials or oral presentations by persons who are not parties if the presiding officer determines that such submissions would be helpful in evaluating the complaint.

(5) The secretary shall establish and maintain the record of the proceedings as required by RCW 34.05.494. If a hearing on the record is conducted, the record shall include a transcript or audio recording of the hearing.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-060 Initial determination and remedies. (1) The presiding officer shall render a written initial decision within (~~forty-five~~) seventy days after the complaint is filed, unless the complainant consents to a longer period. The determination shall include a statement as to whether, based upon a preponderance of the evidence, a violation of Title III has been established with regard to an election. If the presiding officer determines that a violation has occurred, the determination shall specify the appropriate remedy, if one exists. If the presiding officer determines that no violation has been established, the complaint shall be dismissed.

(2) The remedy awarded under this section shall be directed to the improvement of processes or procedures governed by Title III and must be consistent with state law. Remedies may include written findings that a violation of Title III has occurred and strategies for insuring that the violation does not occur again, as well as any other remedy available to the secretary under law. The remedy may not include any award of monetary damages, costs,

penalties or attorney fees, and may not include the invalidation of any vote(~~(7)~~) or ballot, or the invalidation, cancellation, or delay of any primary or election. Remedies addressing the validity of any primary or election or of any ballot or vote may be obtained only as otherwise provided by law.

(3) The initial determination shall include a summary of the process for obtaining an administrative review and shall include notice that judicial review may be available.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-080 Alternative dispute resolution. (1) If a final determination is not rendered within (~~(forty-five)~~) ninety days after the filing of the complaint, or within such additional time to which the complainant may consent, then the complaint shall be transferred to a board of arbitration, which must resolve the complaint within sixty additional days, which may not be extended. The board of arbitration shall be composed of three members, designated by the secretary, at least two of whom must be county auditors or election managers. No two members of the panel may be employed by the same office, agency or other employer.

(2) The arbitrators shall review the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hearing or receive any additional testimony, evidence, or other submissions. The arbitrators shall determine the appropriate resolution of the complaint by majority vote. No further administrative review is available, but the arbitrator's final determination shall include notice that judicial review may be available.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-090 Publication. All final determinations pursuant to WAC 434-263-070 shall be posted on the secretary's web site(~~(, lodged with the state library or state archives, and distributed to others upon request and upon payment of copying costs. Copies shall be provided to the parties at no cost)~~) for at least ninety days.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-070 Additional information and equipment required. The vendor shall provide a working model of the equipment under review for the duration of the examination. (~~The secretary of state may, at the expense of the applicant, contract with independent testing authorities or laboratories, or experts in mechanical engineering, electrical engineering, or data processing to assist in the examination of the equipment.~~)

NEW SECTION

WAC 434-335-090 Voting systems review board evaluation. The voting systems review board evaluation must include, but is not limited to:

- (1) A review of statutory requirements;
- (2) A review of applicable federal standards;
- (3) A review of the approved qualification test results released directly to the secretary of state by the federally approved independent testing authority;
- (4) If applicable, a review of reports or other materials from prior hearings on the proposed system, procedure, or modification, either in whole or in part;
- (5) A review of the report produced by the secretary of state upon completion of the examination of the voting system;
- (6) If applicable, a review of any procedures manuals, guidelines, or other materials issued for use with the system;
- (7) A review of any effect the application will have on the security of the voting system;
- (8) A review of any effect the application will have on the accuracy of the voting system;
- (9) A review of any effect the application will have on the ease and convenience with which voters use the system;
- (10) A review of any effect the application will have on the timeliness of vote reporting; and
- (11) A review of any effect the application will have on the overall efficiency of the voting system.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-335-080

Deposit for examination expenses.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-270 Definition of official logic and accuracy test. As used in this chapter, "official logic and accuracy test" means the test performed in accordance with RCW 29A.12.130 for all voting systems used.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-300 Logic and accuracy testing of voting systems and equipment(~~((State primary and general election))~~). (1) At least three days before each state primary or general election, the office of the secretary of state must test the programming of the vote tabulating system to be used at that primary or election. The test must verify that the system will correctly count the votes cast for all candidates and all measures appearing on the ballot. The test must also verify that the machines are functioning to specifications.

(2) County auditors must conduct the test in the same manner as subsection (1) of this section for special elections not held in conjunction with a state primary or general election. The secretary of state is not represented at the tests for special elections.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-310 Procedure for conduct of (~~delayed~~) primary or general election emergency logic and accuracy test. If the official logic and accuracy test cannot be completed at the scheduled time and place, an emergency test must be scheduled by the county auditor. The emergency test must be conducted and properly completed prior to the processing of any official ballots through the tabulating system. If no representative of the office of the secretary of state is able to attend the emergency test, the county auditor and another member of the county canvassing board or their designated representative must observe the test and certify

the results. Observers and notification must be provided pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-320 Logic and accuracy test scheduling and preparation--State primary and general election. Prior to each state primary and general election, the office of the secretary of state must prepare a schedule of logic and accuracy tests. The office of the secretary of state must ~~((notify))~~ contact each county ~~((of the date and time of))~~ auditor at least thirty days before the primary or general election to schedule the test ~~((at least thirty days before the primary or election))~~. The county auditor must notify the parties, press, public, and candidates of the date and time of the test.

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-330 Logic and accuracy test certification(~~--State primary and general election~~)). (1) The county auditor or deputy, the secretary of state representative, and any political party observers must certify that the test of voting systems that will be used in the primary or general election was conducted in accordance with RCW 29A.12.130. This certification must include verification that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. Copies of this certification must be retained by the secretary of state and the county auditor and may be posted by electronic media. All ~~((programming materials,))~~ test results, ~~((and))~~ test ballots, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.

(2) For special elections not held in conjunction with a state primary or general election, the secretary of state is not represented and does not retain a copy of the certification. The county auditor or deputy and any political party observers must certify that the test of voting systems that will be used in the special election was conducted in accordance with RCW 29A.12.130. This certification must include verification that the version

numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. Copies of this certification must be retained by the county auditor and may be posted by electronic media. All test results, test ballots, and a copy of the tabulation programming must be kept in secure storage, employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.

(3) If, for any reason, any changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

OPTICAL AND DIGITAL SCAN SYSTEMS

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-430 Definition((s)). ~~((For optical scan voting systems+))~~

~~((1) "Voting response area"))~~ "Target area" means the area on the ballot for optical and digital scan voting systems, as specified in the instructions, in which the voter may place a mark to indicate a vote.

~~((2) "Scanning area" means the portions of the ballot that the system scans in order to read the vote marks made by voters.~~

~~((3) "Ballot marking code" means the coded patterns printed on the ballot intended to identify the ballot style to the ballot counting system.))~~

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-440 Logic and accuracy ~~((test deck preparation))~~ pretest--State primary and general election--Optical and digital scan systems. The county is responsible for preparing and testing the vote tabulating system prior to the official logic and accuracy test. This pretesting must be completed prior to the official logic and accuracy test and prior to using the equipment to process

ballots. ~~((Information describing the candidates, offices, ballot styles, number of appearances of each office, method used to mark the test deck, a copy of the anticipated results, and all other information required to create the test decks must be sent to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county must advise the office of the secretary of state before the 20th day prior to the primary or election.))~~

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-445 The preparation of logic and accuracy test decks. (1) Each county shall produce a test deck of ballots to be used in ~~((the pretest and))~~ the official logic and accuracy test to verify that the vote tabulating system is programmed to correctly count the ballots.

~~((When a race has five or fewer candidates, the))~~ (2) The pattern to mark the test deck shall begin by giving the first candidate in each race one vote, the second candidate in each race two votes, the third candidate in each race three votes, etc. ((When a race has more than five candidates the pattern may be repeated.)) Once the pattern is completed for each race and issue, each remaining precinct or ballot style must be tested by using ((at least)) a minimum of one ballot that has a first choice marked for each race and issue. Additional votes may be added to ensure all responses for a race or issue have unique results. Another pattern may be used if it meets the requirements outlined in this section and is approved by the secretary prior to marking the test deck.

(3) The test deck must also test that the vote tabulating system is programmed to accurately count write-in votes, overvotes(, undervotes,) and blank ballots. ((In addition, if ballot on demand systems will be used during the election,)) The test deck must also include a sampling of all ballots ((printed from the ballot on demand system)) that will be used during the election, including ballot on demand, alternative language ballots, and ballots marked with an electronic ballot marker.

(4) In a partisan primary:

(a) When a consolidated ballot is used, the test deck must test that the partisan and nonpartisan votes are counted properly for situations where just one party is selected, no party is selected, and both parties are selected; and

(b) When separate ballots are used, a test deck for each party must be prepared in addition to a test deck for nonpartisan races.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-450 Optical and digital scan test ballot selection--State primary and general elections. A matrix of a county's test deck and a sample ballot must be sent to the office of the secretary of state by the fourteenth day prior to the official logic and accuracy test. Prior to the ~~((official logic and accuracy))~~ test, the office of the secretary of state must review the provided ~~((election materials with the county and select a representative sample of ballot styles sufficient to cover all offices and issues appearing in the election. If the office of the secretary of state prepares the test deck, the county auditor must send to the secretary of state blank ballots of the selected ballot styles as soon as the ballots are available. The representative sample constitutes the official logic and accuracy test, unless conditions warrant the office of the secretary of state to conduct a complete test of every precinct))~~ matrix to determine if it is prepared in accordance with WAC 434-335-445 and if the representative ballot sample of ballot styles is sufficient to cover all offices and issues appearing in the election.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-490 Poll site-based optical scan ballot counter preparation and testing. (1) The logic and accuracy test of a poll site-based optical scan ballot counter must be performed by the county during preparation of the counter prior to distribution. ~~((As the ballot counter is programmed and prepared for distribution, a test of the ballot counter and the ballot styles must be performed.))~~ This test must establish that the ballot counter is functioning within system standards. All ballot styles programmed for the ballot counter must be processed by the ballot counter in order to ~~((insure))~~ ensure that it is correctly counting and accumulating every office. The test must also establish that the ~~((printed voter response))~~ target areas on the ballot are correctly aligned with the ~~((scanning))~~ scanned target area. After all tests are performed and the ballot counter is ready for distribution, the ballot counter must be sealed and the seal number recorded. These tests serve as the official logic and accuracy test of poll site-based optical scan ballot counters.

(2) A log must be created during the testing of a poll-site based optical scan ballot counter. The log must record the time of each test, the precinct numbers, the seal number, the machine number of each ballot counter, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation

and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

~~((DIRECT RECORDING))~~ ELECTRONIC VOTING SYSTEMS

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-510 Definitions. ~~((For direct recording electronic voting systems:~~

~~"Access device" is the device that is used by the voter to access the ballot at a direct recording electronic voting device. It may be a card or other media.))~~

~~"Calibration" is the touch screen setting on a ((direct recording electronic voting system)) disability access unit with touch screen capability that controls the ((voter response)) target area.~~

~~(("Controller" is a component of a direct recording electronic voting system that allows the poll worker to add information to an access device to allow a voter to access the correct ballot style.~~

~~"Parallel monitoring" is a process designed to detect the potential presence of malicious code in the software of a voting machine. It requires a specific number of voting machines to be removed from random poll sites before voting begins. These machines are then test-voted throughout election day.~~

~~"Response)) "Direct recording electronic device" is a device that records a voter's responses electronically.~~

~~"Electronic ballot marker" is a device that marks a voter's responses on a preprinted paper ballot.~~

~~"Target area" is the area on the ballot face that records the voter's choice.~~

~~"Touch screen" is a type of computer interface on a voting device that allows the voter to select a choice by touching the screen.~~

~~(("Voter verified paper record" is a paper record of a voter's choices. The paper record may be verified by the voter before the vote is cast.))~~

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-520 Logic and accuracy test plan preparation--
~~((State primary and general election--))~~Disability access units.
(1) The test plan used for the official logic and accuracy test ~~((prior to a state primary or election))~~ for disability access units must be prepared by the county in the same manner as for optical and digital scan ballots. The official testing must be completed before a ~~((direct recording device))~~ disability access unit may be used for marking or casting ballots. Counties must complete the testing to have in-person disability access voting available starting twenty days before the day of a primary or election. ~~((Information describing the candidates, offices, ballot formats, ballot styles, number of appearances of each office, and all other information required to create the test plan must be sent to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county auditor must advise the office of the secretary of state before the 20th day prior to the primary or election.))~~

(2) This test serves as the official logic and accuracy test of poll site-based optical scan ballot counters. A log must be created during the test, recording the time of each test, the precinct numbers, the seal number, the machine number, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-540 ~~((Direct recording electronic))~~ Touch screen calibration adjustment standards and tests. Prior to each state primary and election, the calibration settings of each ~~((direct recording electronic))~~ device using touch screen technology must be tested to ~~((insure))~~ ensure that the ~~((response))~~ target areas are functioning within system standards.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-550 Direct recording electronic ~~((voting response))~~ target area tests. ~~((Prior to the official logic and~~

~~accuracy test, and prior to the programming of the poll-site direct recording electronic devices,))~~ Each county employing a direct recording electronic balloting system must conduct a test to confirm that the ((voting response)) target area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to ((insure)) ensure that the programming is correctly counting and accumulating every office, measure, and ((candidate)) selection by the voter.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-560 ~~((Direct recording electronic ballot marking code program))~~ **Electronic ballot marker test.** ~~((Prior to the official logic and accuracy test, each county employing a direct recording electronic balloting system to confirm that the voting response areas indicated on all ballot faces are programmed correctly. The county must test all ballot styles on at least one device to insure that the programming is correctly counting and accumulating every office and candidate.))~~ Each county employing an electronic ballot marker must conduct a test to confirm the target area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to ensure the programming is correctly marking the target area for every office, measure, and selection by the voter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-335-340	Logic and accuracy testing of voting systems and equipment--Special elections.
WAC 434-335-350	Logic and accuracy test deck preparation--Special elections.
WAC 434-335-360	Logic and accuracy test scheduling and preparation--Special election.
WAC 434-335-370	Logic and accuracy test certification--Special election.
WAC 434-335-460	Optical scan read head adjustment standards and tests.
WAC 434-335-470	Optical scan test ballot scan area alignment tests.
WAC 434-335-480	Optical scan ballot marking code

WAC 434-335-500	program test. Poll site-based optical scan ballot counter test notices, observers, and log of process.
WAC 434-335-530	Direct recording electronic test ballot selection--State primary and general election.
WAC 434-335-570	Direct recording electronic system logic and accuracy test notices, and observers.
WAC 434-335-580	Poll site-based direct recording electronic voting device preparation and testing.
WAC 434-335-590	Poll site-based direct recording electronic device test notices, observers, and log of process.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-005 Authority and purpose. These rules are adopted under authority of RCW 29A.04.611 to implement RCW 29A.76.040 (~~((pursuant to chapter 34.05 RCW to establish and govern the procedures in))~~), the census mapping project administered by the secretary of state for the U.S. Census Bureau.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-010 Definitions. As used in (~~these regulations~~)) this chapter:

(1) "Census mapping project" includes all functions performed by the secretary of state and each county auditor in the preparation, maintenance, distribution, and filing of precinct maps, detail maps, and census correspondence listings pursuant to RCW 29A.76.040.

(2) "Secretary of state" includes the secretary of state, assistant secretary of state, deputy secretary of state, or any other person authorized by the secretary of state to act in his or her behalf in the census mapping project.

(3) "County auditor" includes each county auditor, county elections official, or any other person authorized by the county auditor to act in his or her behalf in the census mapping project.

(4) "Census maps" refers to the maps provided by the U.S. Census Bureau which indicate census unit boundaries and numeric identification of such census units.

(5) "Census units" refers to the census geographic area designations for which the population count will be reported including census tracts, block groups, blocks, enumeration districts, and county census divisions.

(6) "Precinct maps" refers to the maps prepared by each county auditor pursuant to RCW 29A.76.040 which indicate the boundaries and numeric identification of each precinct in that county.

(7) "Precinct lists" refers to the lists prepared by each county auditor pursuant to RCW 29A.16.050(3) which indicate the names and consecutively assigned numbers of each precinct in that county.

(8) "Base maps" refers to the (~~sets of mylar~~) maps of each county which are provided by the secretary of state on which final detail maps will be prepared.

(9) "Census overlay maps" refers to the ~~((mylar))~~ overlay maps prepared by the secretary of state which indicate census unit boundaries and numeric identification for the area covered by each base map.

(10) "Precinct overlay maps" refers to the ~~((mylar))~~ overlay maps prepared by each county auditor which indicate precinct boundaries and numeric identification for the area covered by each base map.

(11) "Detail map" refers to the sets of maps produced by the combination of the base maps with the corresponding census and precinct overlay maps for each county.

(12) "Census correspondence listings" refers to the lists prepared by each county auditor pursuant to RCW 29A.76.040 which indicate the census units or portions of census units contained in each precinct in that county.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-020 Precinct maps--~~((Availability and))~~
Distribution. (1) ~~((Pursuant to the provisions of RCW 29A.76.040, on or before July 1, 1980, each county auditor shall prepare for public inspection and use))~~ Each county auditor shall maintain precinct maps of that county.

(2) ~~((On or before July 18, 1980))~~ Upon request, each county auditor shall transmit to the secretary of state one complete set of precinct maps of that county.

~~((3) Each county auditor shall also send one copy of the precinct maps of each city or town in that county to the clerk of that city or town.))~~

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-369-030 Precinct lists--Preparation and filing. ~~((On or before July 18, 1980))~~ Upon request, each county auditor shall prepare and transmit to the secretary of state a precinct list of that county. Precinct names shall be listed in alphabetical order ~~((and shall also be))~~ or numbered consecutively.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-369-040 Base maps, census overlay maps, and related information--Duties of the secretary of state. ~~((On or before September 15, 1980,))~~ The secretary of state shall prepare and transmit to each county auditor the following:

- (1) A set of base maps of that county;
- (2) A set of census overlay maps for each base map of that county; and
- (3) A sequential census unit listing, provided by the U.S. Census Bureau, which indicates all census units delineated on the census and base maps of that county.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-050 Precinct overlay maps--Preparation. Pursuant to the provisions of RCW 29A.76.040, each county auditor shall prepare precinct overlay maps for each base map of the county and each city and town within that county ~~((according to the following procedures:))~~

~~((1) Precinct overlay maps shall be prepared on the reproducible mylar overlays provided by the secretary of state; (2) each county auditor shall transfer all precinct boundaries and numeric identification in red ink onto the mylar overlay for each base map of that county; and (3) each overlay map shall include the following identification in the lower left hand corner: (a) The name of the area covered by the map; (b) an arrow indicating north; and (c) the preparation date of the precinct overlay map)).~~

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-060 Census correspondence listings--Preparation. Pursuant to the provisions of RCW 29A.76.040, each county auditor shall prepare a census correspondence listing according to the following procedures:

- (1) Record the census tracts or county census divisions (CCD) and the smallest census units in each area for which population counts are to be reported from the sequential census unit listing supplied by the U.S. Census Bureau. ~~((+))~~The order of census information on the census correspondence listing shall be identical to the sequential census unit listing.~~((+))~~

(2) Record the number or numbers, as assigned pursuant to RCW 29A.16.050(3), of each precinct (~~which~~) that is wholly or partially coextensive with the census unit(~~(+)~~).

(3) (~~wherever~~) Where census unit or precinct boundaries are not coincident, estimate for each portion of a split census unit, the proportion of the total number of registered voters residing in each precinct containing a portion of the split census unit. (~~(+)~~) Each county auditor shall refer to current voter registration lists and other available information to determine such estimated proportion of registered voters. Such estimates shall be expressed to at least the nearest 10 percent of the total number of registered voters within the precinct. (~~(+)~~

~~The census correspondence listings shall be prepared in substantially the following form:~~

~~STRICKEN GRAPHIC~~ _____

County _____ Map sheets _____

Census Tract CCD	Block ED	Precinct Number	% of Registered Voters

~~STRICKEN GRAPHIC~~)

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-369-070 Detail maps and census correspondence listings--Maintenance, distribution, and filing. (1) (~~On or before November 1, 1980~~) Upon request, each county auditor shall send to the secretary of state the complete set of (~~mylar~~) detail maps and census correspondence listings for that county;

(2) The secretary of state shall maintain the original sets of (~~mylar~~) detail maps of each county;

(3) The secretary of state shall reproduce and distribute copies of detail maps to each county auditor for the actual cost of reproduction; and

(4) Each county auditor shall maintain copies of precinct maps, detail maps, and census correspondence listings of the county. Such maps shall be available for public inspection during normal office hours. Copies shall be made available to the public (~~for a fee necessary to cover the cost of reproduction under such~~

~~rules as the county auditor has adopted pursuant to RCW 42.17.260))~~
at actual reproduction cost.

REPEALER

The following section of the Washington Administrative Code
is repealed:

WAC 434-369-080

Compensation to county auditors for
direct expenses.

Chapter 434-381 WAC

STATE VOTERS' PAMPHLET

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state:

(a) For candidates who filed during the regular filing period, within (~~((three business))~~) seven calendar days after filing their declaration of candidacy;

(b) For candidates who filed during a special filing period, or were selected by a political party pursuant to either RCW 29A.52.010 or 29A.24.140, within (~~((three business))~~) seven calendar days after the close of the special filing period or selection by the party.

(2) For ballot measures, including initiatives, referendums, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

WAC 434-381-160 Listing committee names and contact information. Committee names and contact information shall be submitted to the secretary of state.

(1) Names for publication in the voters pamphlet shall be listed in the order submitted by the committee;

(2) Each committee member may use up to eight words as a title or identification. (~~"Title or identification" means a formal or informal description of the present or past occupation, role within an organization, educational qualification, or office of an individual, but does not include any expression of opinion or motivation;~~) No words that are obscene or otherwise prohibited for distribution through the mail may be used;

(3) The secretary will make every effort to maintain consistency in form and style for publications;

(4) State legislators will be identified in the following manner: State representative or state senator, with each title constituting two words;

(5) State elected officials will be identified as follows: Governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands and insurance commissioner, with each title counting as many words as in that title;

(6) Additional titles or descriptions may be added to reach the maximum title length; and

(7) Each committee may submit contact information for inclusion in the voters pamphlet consisting of: A telephone number, an e-mail, and an internet address which will not count toward the maximum word allowance.